

DECISION



12191
PLM II
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-193333

DATE: December 4, 1979

MATTER OF: Robert Flores

DIGEST: An employee of the Department of the Interior was temporarily detailed to a higher grade position for 20 months beginning in 1974. His agency argues that the position he occupied was not classified even though two other employees in the higher grade were assigned the same duties. Since the only existing position substantially describes duties which all the employees performed, the claimant was detailed within the meaning of Turner-Caldwell, 55 Comp. Gen. 539 (1975, affirmed), 56 id. 427 (1977). The situation here is a detail to a career ladder position, not an accretion of duties in anticipation of a promotion.

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The Department of the Interior requests reconsideration of an allowance by our Claims Division on April 26, 1979, of a claim by Mr. Robert Flores for a retroactive promotion with backpay for a detail to a higher graded position in excess of 120 days. The Claims Division action reversed a disallowance of August 22, 1978, of Mr. Flores' claim. 33

Mr. Flores is an employee in the agency's Division of Contract Compliance, Office for Equal Opportunity, Western Region, Denver, Colorado. The agency states Mr. Flores' claim as essentially that he be given a retroactive temporary promotion from GS-12 to GS-13 based on an April 14, 1974, through December 22, 1975 detail as Acting Unit Manager in his office. The agency denied Mr. Flores' claim administratively and requests reconsideration of the allowance on the ground that the Unit Manager position was not established and classified until February 25, 1977.

In detail, the agency states as follows:

"We believe that to properly determine appropriate action on this claim it is necessary to recognize that there were two GS-13 positions in the Western Region of the Office for Equal Opportunity:

[CLAIM for Retroactive Promotion
and Backpay]

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- "1) GS-160-13 Equal Opportunity Specialist (Employment),
Position # SF 72-14.
- "2) GS-160-13 Supervisory Equal Opportunity Specialist
(Employment), Position # 77-99.

"A copy of these positions is attached.

"Position # 77-99 was the Unit Manager position. However, as indicated above, because position # 77-99 was not established and classified until 1977, we denied Mr. Flores' request for retroactive promotion and back pay even though it is well documented that he served as Acting Unit Manager in 1974 and 1975. No Unit Manager position was established and classified prior to 1977.

"Position # SF 72-14 was the only GS-13 position established and classified in the Western Region during the period from January 7, 1972 until February 25, 1977 at which time it was replaced by position # 77-99. However, Mr. Flores was not detailed to position # SF 72-14. He does not claim that he was detailed to that position and no documentation in the case demonstrates or shows that his supervisors or anyone ever claimed that he was detailed or appointed to or performed the duties of position # SF 72-14, the only GS-13 position in 1974 and 1975. What is shown is that during 1974 and 1975, Mr. Flores performed as Acting Unit Manager and that at the same time, two incumbents of position # SF 72-14 (Mr. Antley and Mr. Martinez), served as Unit Manager. So it was apparently reasoned by your office that if Mr. Flores performed the same duties as Mr. Antley and Mr. Martinez and if Mr. Antley and Mr. Martinez were incumbents of position # SF 72-14, then Mr. Flores must have been detailed to position # SF 72-14. If this were so, we agree that Mr. Flores' claim should be granted.

"However, the facts are that in 1974 and 1975, Mr. Antley and Mr. Martinez were laterally detailed from position # SF 72-14 to the Unit Manager duties just as Mr. Flores was detailed to those duties. During the period when Mr. Flores performed the same duties as Mr. Antley and Mr. Martinez, none of them were performing the duties of

position # SF 72-14. Therefore, the fact that Mr. Flores performed the same duties as Mr. Antley and Mr. Martinez in 1974 and 1975 means that Mr. Flores was performing the Unit Manager duties, not that he was performing the duties of position # SF 72-14.

"Review of the duties of the Unit Manager position and position # SF 72-14 shows that the positions were not the same. They had different titles and different functions. Under the Office for Equal Opportunity organization, the Unit Managers have full-time supervisory responsibility for a definite organizational unit while incumbents of position # SF 72-14 merely acted as ad hoc team leaders when necessary."

Position numbered SF 72-14 was allocated on January 7, 1972, as Contract Compliance Officer, GS-301-13. Its title and classification series were changed to Equal Opportunity Specialist (Employment) GS-160-13, on August 6, 1972, to accord with the issuance of applicable classification and qualification standards.

We have reviewed the position descriptions identified above together with OEO-Western Region instruction memoranda as follows:

71-6, February 28, 1972, which organized the office under the team leader structure with two Team Leaders, a Mr. Happel and Acting Team Leader Martinez;

74-5, effective April 14, 1974, which organized the office under the Unit Manager structure with three Unit Managers, Antley and Martinez, and Acting Unit Manager Flores;

Unnumbered Instruction Memorandum of December 16, 1975, which limited the unit structure to two with Antley and Martinez the Unit Managers and returned Flores to a Compliance Officer assignment effective December 22, 1975.

Each of the above memoranda defines briefly the duties of the Team Leader or Unit Manager as:

1. Supervise the daily work of their compliance officers.
2. Coordinate the scheduling of compliance reviews and direct the assignment of personnel to make reviews.
3. Critique drafts of review reports.
4. Compose or review correspondence with contractors such as scheduling reviews, requesting information, and directing corrective action.
5. Participate in conciliation meetings with contractors to obtain agreements on acceptable affirmative action programs and other compliance matters.

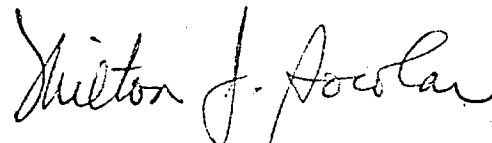
The position of Supervisory Equal Opportunity Specialist (Employment) number 77-99 was allocated February 25, 1977, and as such it has no probative value as to what the work assignment and classification situations were during the period April 14, 1974, to December 22, 1975, the period of Mr. Flores' claim. The only position available on the record before us is the one numbered 72-14 which apparently was used to place Happel, Martinez and Antley in grade GS-13 doing the same work admittedly performed by Flores during the period claimed. Position 72-14 describes in substance those duties, and the difference between the use of the terms Unit Manager and Team Leader, as set forth in the above instructional memoranda, does not warrant denying recovery under Turner-Caldwell, 55 Comp. Gen. 539 (1975); affirmed, 56 id. 427 (1977).

In addition to the above quote stating the agency position, the agency referred to the supposition that Mr. Flores had assumed the duties of 72-14 (top of career-ladder position) by accretion. This would not have been a detail and, therefore, would not be governed by the Turner-Caldwell decisions. However, the record establishes that Mr. Flores was assigned the duties of a higher grade position on April 14, 1974, by an office instruction. Accordingly, this case does not turn on accretion of duties. Compare Patrick J. Fleming, B-191413, May 22, 1978.

On the record we sustain the Claims Division's allowance of April 26, 1979. Mr. Flores is to be given a retroactive temporary promotion to

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position 72-14 on the 121st day after April 14, 1974, and ending
December 22, 1975.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States